LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 4 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 518

MEYER ACKERMAN, et al., *Petitioners*,

v.

GLOBE-DEMOCRAT PUBLISHING COMPANY, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

MALCOLM L. BARTLEY
DONALD S. SIEGEL
705 Olive Street
St. Louis 1, Missouri

BERNARD DUNAU
912 Dupont Circle Building
Washington, D. C. 20036

Attorneys for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Statute Involved	3
Statement	3
Reasons for Granting the Writ	12
Conclusion	30

Appendix A, Judgment 1a

Appendix B, Opinion, Original and on Rehearing, Ackerman v. Globe-Democrat Publishing Company 2a, 19a

Appendix C, Opinion, Original and on Rehearing, Allen v. Globe-Democrat Publishing Company 24a, 36a

Appendix D, Opinion, On Rehearing, Irwin v. Globe-Democrat Publishing Company 40a

Appendix E, Opinion, On Rehearing, Monterosso v. St. Louis Globe-Democrat Publishing Company .. 45a

Appendix F, Survey of Collective Bargaining Agreements 46a

AUTHORITIES CITED

Cases:

Ackerson v. Western Union Tel. Co., 234 Minn. 271, 48 N.W. 2d 338 ..... 17, 26

Adams v. Jersey Central Power & Light Co., 21 N.J. 8, 120 A. 2d 737 17

Allen v. Globe-Democrat Publishing Co., 368 S.W. 2d 460 ..... 1, 9, 10, 22, 26

Associated Press v. N.L.R.B., 301 U.S. 103 14

Page

Association of Westinghouse Salaried Employees v. Westinghouse Corp., 348 U.S. 437 28
Atlantic and Gulf Stevedores v. Ellerman Lines, 369 U.S. 355 15
Baker v. Texas & Pac. Ry. Co., 350 U.S. 227 15
Basham v. Pennsylvania R.R. Co., 372 U.S. 699 15
Brinkerhoff-Faris Trust Co. v. Hill, 281 U.S. 673 29
Brown & Co. v. M'Gran, 14 Pet. 479 16
Dairy Queen v. Wood, 369 U.S. 469 17
Drake Bakeries v. Local 50, Bakery Workers, 370 U.S. 254 21
Gallick v. Balt. & Ohio R.R. Co., 372 U.S. 108 15
Gerhart v. Henry Disston and Sons, 290 F. 2d 778 (C.A. 3) 16
Gorman v. Washington University, 316 U.S. 98 27
Hearst Publications v. N.L.R.B., 136 F. 2d 608 (C.A. 9) 14
Huckleberry v. Missouri Pac. R. Co., Mo. Sup., 26 S.W. 2d 980 27
International Association of Machinists v. Central Airlines, 372 U.S. 682 14
Irwin v. Globe-Democrat Publishing Co., 368 S.W. 2d 452, certiorari pending, No. 415, October Term, 1963 ..... 2, 9, 10, 26
Jacob v. New York, 315 U.S. 752 15
Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 ..... 14, 18, 27
Mabee v. White Plains Publishing Co., 327 U.S. 178 ... 14
Maynard v. Durham & So. Ry. Co., 365 U.S. 160 15
McAllister v. St. Louis Merchants' Bridge Terminal Ry. Co., 324 Mo. 1005, 25 S.W. 2d 791 27
Missouri ex rel. Missouri Ins. Co. v. Gehner, 281 U.S. 313 29
Monterosso v. St. Louis Globe-Democrat Publishing Co., 368 S.W. 2d 48, certiorari pending, No. 414, October Term, 1963 ..... 1, 9, 10, 26
Moore v. Terminal R.R. Assn., 358 U.S. 31, reversing, 312 S.W. 2d 769 ..... 27, 15
Norton v. Larney, 266 U.S. 511 14
Owens v. Press Publishing Co., 20 N.J. 537, 120 A. 2d 442 17
Pashea v. Terminal R.R. Assn. of St. Louis, 350 Mo. 132, 165 S.W. 2d 691 27

Page

Pike Rapids Power Co. v. Minn., St. Paul, & S.S.M.R. Co., 99 F. 2d 902 (C.A. 8) 16
Pulitzer Publishing Co, 57 NLRB 1696 14
Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 27
Raley v. Ohio, 360 U.S. 423 27
Rankin v. Fidelity Ins. T. & S.D. Co., 189 U.S. 242 16
Rogers v. Missouri Pac. R.R. Co., 352 U.S. 500 ....15, 17, 27
Smith v. Evening News Association, 371 U.S. 195 ....14, 28
Sun Printing and Publishing Assn. v. Edwards, 194 U.S. 377 14
Textile Workers Union v. Lincoln Mills, 353 U.S. 448 .. 14
United States v. Taylor, 293 F. 2d 717 (C.A. 5) 16
United Steelworkers v. American Mfg. Co., 363 U.S. 564 18
United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574 18
West v. Smith, 101 U.S. 263 16
Wilkerson v. McCarthy, 336 U.S. 53 15

STATUTES AND RULES:

28 U.S.C. § 1257(3) 2, 27
Labor Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. § 185(a), Section 301(a) 3, 12, 14, 16, 25
Supreme Court Rules, Rule 19(1)(a) 26

MISCELLANEOUS:

Anno., Jury Question, Meaning of Contract, 65 A.L.R. 648 16
Chase and Nix, *Dismissal-Pay Provisions in Union Agreements*, 1949, 70 Monthly Lab. Rev. 384 (1950) 17, 20
Collective Bargaining Provisions: Discharge, Discipline, and Quits: Dismissal Pay Provisions, Bull. No. 908-5, U.S. Dept. of Lab., Bur. Lab. Stat., 34 (1948) 17
3 Corbin, Contracts, § 554 (1960) 16, 18
Restatement, Contracts § 236(b) 18
Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, § 84 (Wolf and Kur. ed. 1951) 26, 27, 29
Stern and Gressman, Supreme Court Practice, 100 (3d ed. 1962) 28, 29
Williston, Contracts, § 616, p. 652 (ed. 1961) 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No.

MEYER ACKERMAN, et al., *Petitioners*,

v.

GLOBE-DEMOCRAT PUBLISHING COMPANY, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

Petitioners (R. 1-3) pray that a writ of certiorari issue to review the judgment of the Supreme Court of Missouri entered in the above-entitled case on April 8, 1963.

OPINIONS BELOW

The initial opinion of the Missouri Supreme Court, and its subsequent opinion denying rehearing or en banc transfer, are reported at 368 S.W. 2d 469 (*infra*, pp. 2a-23a). Companion opinions in cases presenting cognate questions, initial and on denial of rehearing, are reported as *Allen* v. *Globe-Democrat Publishing Co.*, 368 S.W. 2d 460; *Monterosso* v. *St. Louis Globe-Democrat Publishing Co.*, 368 S.W. 2d 48, certiorari

pending, No. 414, October Term 1963; *Irwin* v. *Globe-Democrat Publishing Co.*, 368 S.W. 2d 452, certiorari pending, No. 415, October Term 1963. The initial opinion in *Allen* is reprinted *infra*, pp. 24a-36a, and the opinions on rehearing in *Allen*, *Monterosso*, and *Irwin* are reprinted *infra*, pp. 36a-45a.

JURISDICTION

The judgment of the Missouri Supreme Court was entered on April 8, 1963 (R. 671, *infra*, p. 1a). Its order denying rehearing or en banc transfer was entered on June 4, 1963 (R. 741). An order was entered on August 22, 1963, by Mr. Justice Goldberg extending the time for filing a petition for a writ of certiorari to November 2, 1963. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

A collective bargaining agreement in an industry affecting interstate commerce, covering a newspaper publisher's employment of printers in its composing room, provides for severance pay in the event of loss of employment from "merger, consolidation or permanent suspension of publication. . . ." The publisher sells its physical property, including its printing plant, to another publisher, and enters into an agreement for the establishment by that other of a single printing plant to be used to print the newspapers of both. The jury finds that the cessation of printing by one publisher and the undertaking by the other to print both papers is, within the meaning of the agreement, a "merger, consolidation, or permanent suspension of publication", and on that basis returns a verdict for severance pay. The court below reverses, holding that severance pay is due only in the event of corporate

merger or consolidation or going out of the business of publishing a newspaper. Two questions are presented:

1. Whether the principle of the inviolability of a jury verdict supported by evidence with reason applies to an action governed by section 301(a) of the Labor Management Relations Act, 1947, and, if it does, whether in this case the proofs justify with reason the jury's verdict.

2. Whether, independently of the jury verdict, federal substantive law governing the enforcement and interpretation of an LMRA § 301 agreement, correctly formulated and applied, requires the conclusion that severance pay is due.

STATUTE INVOLVED

Section 301(a) of the Labor Management Relations Act, 1947 (61 Stat. 156, 29 U.S.C. § 185(a)) provides that: "Suits for violation of contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT

Petitioners are 154 printers formerly employed in the composing room of respondent Globe-Democrat Publishing Company which publishes in St. Louis a daily newspaper known as the St. Louis *Globe-Democrat*. (R. 2-4, 19-20, 32-33, 125, 127, 173, 174, 178, 179, 185). Petitioners were represented in collective bar-

gaining by St. Louis Typographical Union No. 8 (R. 34, 19-20). The terms of their employment with the Globe-Democrat were governed by a collective bargaining agreement entered into between the Union and the St. Louis Newspaper Publishers' Association, the latter acting on behalf of the Globe-Democrat and the Pulitzer Publishing Company, publisher of the St. Louis *Post-Dispatch* (R. 4-5, 20, 146-147). The agreement had a duration from January 1, 1958 to December 3, 1959 (R. 4-5, 20). It defined the work committed to the printers as "all composing room work . . ." (R. 40).

The collective bargaining agreement made provision for severance pay in the following terms (R. 6, 20, 34-35):

> 1. Situation holders laid off to reduce the force shall receive severance pay of one week's pay for each year of continuous priority.
>
> 2. *In the event of merger, consolidation or permanent suspension of publication by any newspaper covered by this contract* [emphasis supplied], all employees who lose employment thereby shall receive severance pay as follows:
>
> Employees having six months priority standing, six (6) weeks' pay.
>
> Employees having one year or more priority standing, twelve (12) weeks' pay.
>
> 3. Such severance pay shall be at the employee's regular straight time rate of pay. Priority standing shall be as recorded on the books of chapel officers at the time of such lay off, suspension, merger or consolidation.

The agreement further provided *inter alia* that "All . . . severance pay credits shall be considered as an

earned equity and shall have prior claim in the event of merger, permanent suspension or liquidation. The cost equivalent of any such earned equity shall be paid immediately upon any employee's severance of employment as a result of such merger, permanent suspension or liquidation" (R. 35-36).

On February 21, 1959, at 3:00 a.m., the St. Louis Newspaper Guild, not connected with the St. Louis Typographical Union No. 8 (R. 55), went on strike against the Globe-Democrat and established a picket line (R. 204). Except for two who appeared for work once and were paid, all printers observed the picket line (R. 205). As typically expressed, the printers stated they "chose not to cross the Guild picket line", (R. 279-327), a right available to them under their agreement (Pl. sub. ex. 1, ¶ G, p. 3). On February 21, 1959, the publisher of the Globe-Democrat sent a letter to all Globe-Democrat employees, stating that (R. 116, 119-120):

> I regret very much that the Globe-Democrat will not be able to publish its Sunday edition because of a strike by the St. Louis Newspaper Guild. It does not appear probable that publication will be resumed in the immediate future.

On February 27, 1959, the Globe-Democrat entered into a ten-year agreement with the Pulitzer Publishing Company (R. 122, 145). Pulitzer agreed to print the Globe-Democrat for the latter upon it resumption of publication following settlement of the Guild strike (R. 122). Pulitzer purchased the physical property of the Globe-Democrat, including its printing plant, subject to a temporary lease-back of business and editorial quarters (R. 122-122A, 141-150, pl. exs. 4-7). The agreement provided for the establishment by

Pulitzer of a unified printing plant, using the best of the equipment of both publishers, for the purpose of printing both papers under a single roof (R. 141-142):

> 1. The Pulitzer Publishing Company shall, with all reasonable dispatch, install in the buildings acquired from Globe-Democrat Publishing Company . . . a modern and efficient newspaper printing plant, using the best of its own equipment and the best of the equipment acquired from Globe-Democrat Publishing Company in setting up said plant initially, and shall install in said buildings such additional printing equipment as may be necessary to constitute a modern and efficient newspaper printing plant capable of printing the newspapers published by both parties . . . .
>
> 2. The Pulitzer Publishing Company, in addition to printing its own newspaper in the said plant, shall print the newspaper published by the Globe-Democrat Publishing Company . . . in said plant . . . .

The agreement provided that each publisher would maintain in its own separate quarters it own business, news, advertising, circulation and editorial departments, and independently conduct the business and determine the policies of these departments, to the end that Pulitzer's participation in the operation of the Globe-Democrat would be confined to "the printing of the Globe-Democrat from the point where the news, editorial, advertising and other content of said newspaper is delivered to . . . Pulitzer . . . for printing, to the point where delivery of the Globe-Democrat . . . is made at the truck side of the loading dock" (R. 142-143, 147-149). Pulitzer agreed to hire as additional personnel only such Globe-Democrat employees as it actually needed, and declined to obligate

itself to former Globe-Democrat employees for any services rendered prior to employment with Pulitzer (R. 149):

> . . . Pulitzer . . . agrees that it will employ any additional persons which it may need in order to print Globe-Democrat ['s] . . . newspaper from the present employees of Globe-Democrat . . . if available, but shall not be obligated to employ any of the employees of Globe-Democrat . . . whose services are not actually needed by it. . . . Pulitzer shall not be obligated to pay to any person formerly employed by Globe-Democrat . . . wages, pensions or other benefits, or severance pay for services rendered to Globe-Democrat . . . prior to the date on which such person is employed by . . . Pulitzer. . . .

On February 27, 1959, the same day that it entered into its agreement with Pulitzer, Globe-Democrat "gave notice of the *consolidation of mechanical operation* of . . . Globe-Democrat . . . and Pulitzer . . ." (R. 20, 5-6, emphasis supplied). The publisher of Globe-Democrat on that day wrote to its employees informing them that "the Globe-Democrat will be printed by the Post-Dispatch, when and if the Guild strike is settled" (R. 120, 121). He observed that "The *consolidation of mechanical operations between competing newspapers* finds great precedent in many cities throughout America, a list which we suspect may grow larger in the future as the mechanical costs of publishing a daily newspaper continue to rise" (R. 122, emphasis supplied). As to employment of the mechanical crafts no longer required by Globe-Democrat, he stated that (R. 122):

> Members of the mechanical unions will be employed on a priority basis in the *consolidated*

mechanical operation. If they all cannot be employed, *the dismissal provisions of the current mechanical contracts will apply.* [Emphasis supplied.]

On June 2, 1959, printing of the Globe-Democrat by Pulitzer having evidently been begun by then, Pulitzer issued a "Statement of Policy Relating to NEW Employees Who Were Formerly Employed by . . . Globe-Democrat . . ." (R. 96, 330, def. ex. C). The statement emphasized that the status of former Globe-Democrat employees hired by Pulitzer is that of "new" employees (def. ex. C):

> 1. *New Employees*—All persons who were formerly employed by . . . Globe-Democrat and who may be employed by . . . Pulitzer . . . in any capacity shall be "new" employees of . . . Pulitzer . . . . This Company has no connection with . . . Globe-Democrat . . . whatever except that it has agreed to print the St. Louis Globe-Democrat on a contract basis in this Company's newspaper printing plant. . . . Pulitzer is under no obligation to employ any particular person or any number of persons formerly employed by . . . Globe-Democrat . . ., but has agreed to select such *new* employees as it might need from qualified former employees of . . . Globe-Democrat . . . if available. [Emphasis in original.]

The statement stressed that eligibility for severance pay with Pulitzer would be based solely on service while in Pulitzer's employ (def. ex. C):

> 8. *Severance Pay*—In the event that a former employee of . . . Globe-Democrat . . . shall become eligible to dismissal or severance pay after employment as a *new* employee of . . . Pulitzer . . . under any contract between . . . Pulitzer . . . and the Unions only actual service of the employee

> while in the employ of . . . Pulitzer . . . shall be taken into consideration in the computation of the amount of such dismissal or severance pay. [Emphasis in original.]

The two-page statement used the words "new employees" eighteen times and emphasized the "new" by underlining it. Those printers formerly employed by Globe-Democrat who were hired by Pulitzer were placed at the bottom of the Pulitzer priority list (R. 98, 113-114).

None of the petitioners performed any work for, received any compensation from, or were called back to work by Globe-Democrat after February 27, 1959 (R. 32, 43). None remained in Globe-Democrat's employ (R. 196, 203-204).

Petitioners through the Union made demand upon Globe-Democrat for severance pay as provided in the collective bargaining agreement, but Globe-Democrat refused to pay (R. 7, 20). Action to compel payment was instituted (R. 1). Upon similar demands and refusals based on like contractual provisions involving the paper handlers, stereotypers, and mailers, whose employment by Globe-Democrat was terminated in the same way as the printers', the members of these mechanical crafts also instituted suit against Globe-Democrat to recover severance pay.[1] In its answer in

---

[1] *Monterosso* v. *St. Louis Globe-Democrat Publishing Co.*, 368 S.W. 2d 481, certiorari pending, No. 414, October Term 1963 (mailers); *Allen* v. *Globe-Democrat Publishing Co.*, 368 S.W. 2d 460 (stereotypers); *Irwin* v. *Globe-Democrat Publishing Co.*, 368 S.W. 2d 452, certiorari pending, No. 415, October Term 1963 (paper handlers).

The theory of the action varied among the several cases. In this case the action was tried on the theory that the arrangement

the paper handlers' suit, read into evidence at the trial of the instant printers' action, Globe-Democrat explicitly admitted that the "arrangement between defendant [Globe-Democrat] and Pulitzer Publishing Company was *within the meaning of Article XII, Section 1* [of the collective bargaining agreement], a merger or a consolidation of the mechanical functions of the two publishers . . ." (R. 232-234, 238, emphasis supplied).

Petitioners' action was tried to a jury. The trial court charged the jury that, as a matter of law, (1) the severance pay provision indemnified the employees for loss of employment with Globe-Democrat, and (2) acquisition of employment elsewhere following loss of employment with Globe-Democrat was irrelevant to petitioners' entitlement to severance pay (R. 491-493). The trial court submitted to the jury for their finding the questions *inter alia*, whether (1) "there was a merger, consolidation or permanent suspension of publication by Defendant [Globe-Democrat] as set out in Article XI, paragraph 2 of the aforesaid collective bargaining agreement," and whether (2) petitioners, "or any of them, lost employment thereby with Defendant [Globe-Democrat]" (R. 491-492). In submitting these questions to the jury, the trial court refused requests for directed verdicts by both petitioners

between Globe-Democrat and Pulitzer resulted in a "merger, consolidation or permanent suspension of publication." The theory in the mailers' action, *Monterosso*, was that the arrangement resulted in a "consolidation"; in the stereotypers' action, *Allen*, a "permanent suspension of publication"; and in the paper handlers' action, *Irwin*, a layoff "to reduce the force." This case, *Allen*, and *Irwin* were tried to a jury. *Monterosso* was tried to the court without a jury. At the *nisi prius* level, the employees won the three cases tried to a jury and lost the one case tried to a court without a jury. On appeal the employees lost all four cases.

and respondent, as well as requested instructions by each, which would have ruled these questions as matters of law (R. 469-470, 474-478, 485-487). The trial court's thinking is revealed by its remark that (R. 69):

> Gentlemen, the defendant's interpretation of the words publication and printing as urged by the respective parties constitute one of the very contested issues in this case. While such words may have a different meaning to the Court, yet such meaning evidently is not too compelling that reasonable minds may not differ. It's only when reasonable minds may not differ that the Court may as a matter of law rule the question. For that reason, as of this time the Court will rule that that constitutes a matter of fact for the Jury.

And, referring to consolidation or merger, the trial court observed that "you have no corporate consolidation . . . . You have no corporate merger. You have a suspension in this case, and, of course, it's a hybrid thing . . . . [I]t has been a jury question all along . . ." (R. 271).

The jury returned a verdict for petitioners for $234,707.80, plus interest, and judgment was rendered accordingly (*infra*, p. 2a).

On appeal, the judgment was reversed, the Missouri Supreme Court holding that respondent's motion for a directed verdict at the close of the evidence, based upon failure of proof, should have been sustained (*infra*, p. 19a). This conclusion was based on that court's determination that the words "merger" or "consolidation," as used in the collective bargaining agreement, can mean only "corporate merger or consolidation," and that the words "permanent suspen-

sion of publication," as used in the collective bargaining agreement, can only mean "GOING OUT OF BUSINESS AS THE PUBLISHER OF A NEWSPAPER" (*infra*, p. 14a). The court below did not disturb the conclusion that petitioners had suffered a loss of employment with the Globe-Democrat.

Petitioners filed a motion for rehearing, or, in the alternative, to transfer the cause to the court en banc (R. 689-729). Central to this motion was petitioners' claim that, in disregard of Section 301(a) of the Labor Management Relations Act, 1947, the court below applied local law instead of applicable federal substantive law in its interpretation of the collective bargaining agreement (R. 691-695, 699-701-715, 727-728). In denying the motion, the court below stated that "We will consider the matter . . ." (*infra*, p. 21a), but concluded that its determination did not conflict with federal law (*infra*, pp. 21a-22a).

In companion decisions the court below also rejected the claims of the mailers, sterotypers, and paper handlers for severance pay (*supra*, p. 9, n. 1).

REASONS FOR GRANTING THE WRIT

The fundamental questions presented by this petition pertain to the role of a jury verdict in the enforcement of a collective bargaining agreement within the purview of section 301(a) of the Labor Management Relations Act, 1947; and, independently of the jury verdict, the correct formulation and application of federal standards governing the interpretation and enforcement of such an agreement.

Significant in themselves, the questions have added importance because they arise in the context of a pro-

vision of an agreement which has widespread incidence in the newspaper industry throughout the United States. A survey conducted by the Contract Division of the International Typographical Union, the parent body of the local union which is the party to the agreement in this case, shows that identical or similar provisions appear in agreements applicable to sixty-five newspapers located in 27 cities covering more than 16,300 journeymen.[2] Illustrative of their nationwide scope, these provisions prevail in such major metropolitan areas as New York, Chicago, Boston, New Orleans, Philadelphia, Cleveland, Los Angeles, and San Francisco (*infra*, pp. 46a-51a, 52a, 54a).[3] Definitive determination of the legal status of this standard and widespread provision is therefore important. This case thus presents questions of intrinsic legal significance in an economic setting of national consequence.

I.

1. As the collective bargaining agreement in this case is "between an employer and a labor organization representing employees in an industry affecting commerce" within the meaning of section 301(a) of the

---

[2] Appendix F, *infra*, pp. 46a-57a, sets forth the specific provision of the agreement, the ITU local union which is the party to it, the number of newspapers to which it is applicable, the number of employees covered by it, and the location.

[3] The widespread scope of the provision is further evidenced by the requirement of the General Laws of the International Typographical Union that "Subordinate unions shall incorporate in PROPOSED contracts a clause providing for . . . severance pay of not less than two weeks' pay for each year of priority in the office of all journeymen affected by suspensions or mergers . . ." (pl. sub. ex. 1A, art. III, sec. 13, pp. 87-88).

Labor Management Relations Act, 1947,[4] it "is a federal contract. . . ." *International Association of Machinists* v. *Central Airlines*, 372 U.S. 682, 692. Its interpretation is governed exclusively by federal substantive law. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 451, 456-457. Even if, as here, the action is instituted in a state court rather than a federal court (*Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95), and is brought by the individual employees rather than their union (*Smith* v. *Evening News Association*,

---

[4] Newspaper publication is of course "in an industry affecting commerce." *Smith* v. *Evening News Association*, 371 U.S. 195; *Associated Press* v. *N.L.R.B.*, 301 U.S. 103, 125-129; *Mabee* v. *White Plains Publishing Co.*, 327 U.S. 178; *Hearst Publications* v. *N.L.R.B.*, 136 F. 2d 608, 610 (C.A. 9), affirmed in this respect, 322 U.S. 111. The National Labor Relations Board has found that Globe-Democrat itself is a company "engaged in commerce within the meaning of the National Labor Relations Act." *Pulitzer Publishing Co.*, 57 NLRB 1696, 1698. It has reached the same conclusion as to Pulitzer. *Id.* at 1697-98. Moreover, the collective bargaining agreement in this case recognizes in terms the applicability of federal law to the operations covered by the agreement (pl. sub. ex. 1, pp. 2, 45, 46), and refers in terms to Globe-Democrat's use of the wire services of Associated Press, United Press, and International News Service (*id.* pp. 7, 10) and its publication of national advertisements (*id.* pp. 36-37): matters specifically called to the attention of the court below on the motion for rehearing (R. 702). That court in its opinion on rehearing plainly accepted the obvious fact that the agreement was between an employer and a union representing employees in an industry affecting interstate commerce (*infra*, pp. 19a-23a). The facts which may be judicially noticed, as well as those which affirmatively appear of record, thus amply establish the applicability of section 301(a); and since the facts do sufficiently show the requisite jurisdictional element, it makes no difference that it was not formally pleaded. *Norton* v. *Larney*, 266 U.S. 511; *Sun Printing and Publishing Assn.* v. *Edwards*, 194 U.S. 377. To question whether the agreement in this case is one between an employer and a union representing employees in an industry affecting interstate commerce would therefore be the sheerest cavil.

371 U.S. 195), the "dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute" (369 U.S. at 103; see also 371 U.S. at 199-201). Regardless of forum or suitor, federal law, not state law, controls the collective bargaining agreement.

2. These are by now commonplaces. The novel and important question is whether, as is true of other federal rights whose vindication is determinable by jury verdict, LMRA § 301 contract rights are protected by the doctrine that a jury verdict is to stand if the determination is supported by the evidence with reason. Whether the issue is the sufficiency of the consideration to support a release (*Maynard* v. *Durham and So. Ry. Co.*, 365 U.S. 160, 163), employee status (*Baker* v. *Texas & Pac. Ry. Co.*, 359 U.S. 227), causation (*Rogers* v. *Missouri Pac. R.R. Co.*, 352 U.S. 500), negligence (*Wilkerson* v. *McCarthy*, 336 U.S. 53), or any other, the pith of the idea is the inviolability of a jury verdict which has a reasonable basis in the evidence. "We may assume that the jury could properly have reached the court's conclusion. But, as the probative facts also supported with reason the verdict favorable to the petitioner, the decision was exclusively for the jury to make." *Rogers* v. *Missouri Pac. R.R. Co.*, 352 U.S. 500, 504. "Cognizant of the duty to effectuate the intention of the Congress to secure the right to a jury determination, this Court is vigilant to exercise its power of review in any case where it appears that the litigants have been improperly deprived of that determination." *Id.* at 509.[4a]

[4a] See also, *Gallick* v. *Balt. & Ohio R.R. Co.*, 372 U.S. 108; *Basham* v. *Pennsylvania R.R. Co.*, 372 U.S. 699; *Moore* v. *Terminal R.R. Assn.*, 358 U.S. 31; *Jacob* v. *New York*, 315 U.S. 752. Compare, *Atlantic* and *Gulf Stevedores* v. *Ellerman Lines*, 369 U.S. 355.

3. The vigilance exercised by this Court to safeguard the integrity of a jury verdict in cases under the Jones Act and Federal Employers' Liability Act should apply equally to cases under section 301(a) of the Labor Management Relations Act, 1947. Unless the parties choose arbitration or waive a jury, an action to recover money damages for alleged breach of an LMRA § 301 contract is triable as of right to a jury. In this case, observing that the rival interpretations of the agreement are "not too compelling that reasonable minds ma not differ", and freely admitting extrinsic evidence to aid in the resolution of ambiguity, the trial court treated the interpretation of the agreement as "a matter of fact for the jury", a "jury question all along", and submitted it to the jury for its determination (*supra*, p. 11). The trial court was unquestionably correct. "Insofar as it was uncertain or ambiguous, the true meaning of the . . . agreement . . . should have been left to the jury." *United States* v. *Taylor*, 293 F. 2d 717, 722 (C.A. 5). For, reiteration that "the interpretation of written instruments properly belongs to the court, and not to the jury" yields to the proposition that "there certainly are cases which, from the different senses of the words used, or their obscure and indeterminate reference to unexplained circumstances, the true interpretation of the language may be left to the consideration of the jury for the purpose of carrying into effect the real intention of the parties." *Brown & Co.* v. *M'Grau*, 14 Pet. 479, 493. This is indeed "well settled." *West* v. *Smith*, 101 U.S. 263, 270.[5] Petitioners had "a right to have

[5] See also, *Rankin* v. *Fidelity Ins. T. & S.D. Co.*, 189 U.S. 242, 252-254; *Gerhart* v. *Henry Disston and Sons*, 290 F. 2d 778, 784, 792 (C.A. 3); *Pike Rapids Power Co.* v. *Minn., St. Paul, & S.S. M.R. Co.*, 99 F. 2d 902, 916 (C.A. 8); Williston, Contracts, § 616, p. 652 (3d ed., 1961); 3 Corbin, Contracts, § 554 (1960); Anno., Jury Question, Meaning of Contract, 65 A.L.R. 648.

the jury determine . . . just what the contract is." *Dairy Queen* v. *Wood*, 369 U.S. 469, 479.

4. This case is an eminently suitable vehicle to decide the question whether the principle of inviolability of a jury verdict reasonably founded in evidence is applicable to an action on an LMRA § 301 contract. For, to say the least, the "proofs justify with reason" (*Rogers* v. *Missouri Pac. R.R. Co.*, 352 U.S. 500, 506) the jury's verdict. Thus:

(a) The court below holds that severance pay is due for loss of employment with Globe-Democrat resulting from corporate merger or consolidation, or from going out of business as a newspaper publisher, but not from ceasing the printing of the newspaper. This dichotomy is at war with the central purpose of the severance pay provision. Defined by the agreement as an "earned equity" (*supra*, pp. 4-5), the objective of severance pay is to ease the burden of anticipated loss of earnings while looking for another job, to compensate for loss of seniority rights and possible pension rights, to provide the wherewithal for retraining or acquiring new skills, and to maintain the good will of the employees and the community.[6] These reasons for severance pay apply with identical force whether the separated worker loses his job through corporate merger or consolidation, going out of business, or ces-

[6] Collective Bargaining Provisions: Discharge, Discipline, and Quits; Dismissal Pay Provisions, Bull. No. 908-5, U.S. Dept. of Lab., Bur. Lab. Stat., 34 (1948); Chase and Nix, *Dismissal-Pay Provisions in Union Agreements*, 1949, 70 Monthly Lab. Rev. 384 (1950); *Ackerson* v. *Western Union Tel. Co.*, 234 Minn. 271, 48 N.W. 2d 338; *Owens* v. *Press Publishing Co.*, 20 N.J. 537, 120 A. 2d 442; *Adams* v. *Jersey Central Power & Light Co.*, 21 N.J. 8, 120 A. 2d 737.

sation of printing. To say that severance pay is due under the agreement in the first two instances, but not in the third, is to impute to the parties a purposeless incongruity. The incongruity is especially marked in that, according to Globe-Democrat itself, the "consolidation of mechanical operations between competing newspapers finds great precedent in many cities throughout America, a list which we suspect may grow larger as the mechanical costs of publishing a daily newspaper continue to rise" (*supra*, p. 7). The parties would hardly have omitted from the severance pay provision a major cause of job loss in the newspaper industry.

The jury's verdict, but not the appellate court's displacement of it, therefore renders an interpretation of the severance pay provision which fulfills its manifest purpose. It goes without saying that an agreement is to be interpreted so as to realize its purpose.[7] And a collective bargaining agreement, as a code for the governance of an industrial enterprise, is in particular to be read in the light of its aim. "In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve." *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 567. See also, *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 578-581; *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 105.

---

[7] Corbin, Contracts, § 545 (1960); Restatement, Contracts, § 236(b).

(b) Globe-Democrat itself recognized that the contractual words "merger, consolidation or permanent suspension of publication" fully embrace cessation of printing by Globe-Democrat and undertaking by Pulitzer to print both papers using the best equipment of both publishers. In its written notice of February 27, 1959, to the employees, Globe-Democrat stated that (*supra*, pp. 7-8):

> Members of the mechanical unions will be employed on a priority basis in the consolidated mechanical operation. If they all cannot be employed, *the dismissal provisions of the current mechanical contracts will apply.* [Emphasis supplied.]

On the same day, at a meeting of representatives of all the mechanical crafts, the publisher of Globe-Democrat stated that "the Post-Dispatch [Pulitzer] would hire what they needed of the former Globe-Democrat members and *those who were not employed by the Post-Dispatch would receive severance pay*" (R. 45, emphasis supplied).

While these statements mistakenly represented that contractual eligibility for severance pay depended on failure to secure employment with Pulitzer, the statements were nonetheless unambiguous in their acknowledgment that cessation of printing by Globe-Democrat and undertaking of printing for both by Pulitzer were in the contractual sense a "merger, consolidation or permanent suspension of publication". For, were they not, there would be utterly no basis for the statement that "the dismissal provisions of the mechanical contracts will apply." In the instant situation the dismissal provisions apply only "In the event of

merger, consolidation or permanent suspension of publication."[8]

Clarity is made doubly plain by Globe-Democrat's admission in its answer in the action instituted by the paper handlers to recover severance pay (*supra*, pp. 9-10). As with the printers' contract, Article XII, Section 1, of the paper handlers' contract provided for severance pay "in the event of merger, consolidation or permanent suspension of publication . . ." (R. 233). Globe-Democrat explicitly admitted that the "arrangement between defendant [Globe Democrat] and Pulitzer Publishing Company was *within the meaning of Article XII, Section 1*, a merger or a consolidation of the mechanical functions of the two publishers . . ." (*supra*, p. 10, emphasis supplied.)[9] It would be hard to admit more clearly that the contractual words cover the event in question.

In interpreting a collective bargaining agreement this Court has placed great weight on the construction

[8] Aside from merger, consolidation, or permanent suspension of publication, the agreement also provides for severance pay in the event of lay-off to reduce force, but in a different amount (*supra*, p. 4). Taken as a whole, therefore, the design of the agreement is to confer severance pay benefits in the case of separation from employment for any reason except voluntary resignation or discharge for cause. It is thus typical of severance pay provisions generally prevalent in collective bargaining agreements in that "a sum of money . . . [is] paid to an individual whose employment is terminated through no fault of his own." Chaso and Nix, *Dismissal-Pay Provisions in Union Agreements, 1949*, 70 Monthly Lab. Rev. 384 (1950).

[9] To be sure, Globe-Democrat further averred that "none of the plaintiffs lost employment thereby and they therefore are not entitled to dismissal pay" (R. 238). The trial court's instructions and the jury's verdict, undisturbed in this respect by the court below, decided the latter contention adversely to Globe-Democrat (*supra*, pp. 10-11).

which a party itself put on the agreement. *Drake Bakeries* v. *Local 50, Bakery Workers*, 370 U.S. 254, 260. Surely in this case the jury was entitled to do no less.

(c) The court below nevertheless holds that the contractual words "merger, consolidation or permanent suspension of publication" are incapable of an interpretation covering cessation of printing by Globe-Democrat and undertaking by Pulitzer to print both papers. This conclusion not only disregards the manifest purpose of the severance pay provision and respondent's own construction of the terms of the agreement but rests upon a rigid reading of words which lexicon itself does not allow.

Merger or consolidation means at least corporate merger or consolidation. But the court below rules that it means *only* corporate merger or consolidation. This *ipse dixit* rests on the court's view that "When words with a well-defined meaning are used in a contract referring to a corporation it is reasonable *to assume* that they are used by the contracting parties in the sense ordinarily ascribed to them in the field of corporate law" (*infra*, p. 15a, emphasis supplied). But it is at least as reasonable to assume that when words are used in a labor agreement the parties ascribe to them the sense relevant to handling a labor problem in the labor field. Severance pay constitutes partial compensation for the injury caused by the loss of a job (*supra*, p. 17). The job loss pertinent to this agreement is the job of a printer working in the composing room of the Globe-Democrat. The contractual words "merger" or "consolidation" relate therefore to jobs in a composing room. In this context these words describe equally aptly either unification of the

separate composing rooms of two corporations or unification of their separate corporate entities. For, since the printer can lose his job just as readily from one arrangement as from the other, there is not the least reason to confine the words "merger" or "consolidation" to corporate combination and to exclude from their purview composing room combination. The utter naturalness of reading the words to embrace both situations is illustrated by Globe-Democrat's reiterated description of its arrangement with Pulitzer as a "*consolidation* of mechanical operation . . ." (*supra*, pp. 7-8, 10, emphasis supplied).

The same artifically restricted reading is present in the court's conclusion that the words "permanent suspension of *publication*" cannot embrace "permanent suspension of *printing*" (*infra*, p. 17a, emphasis supplied). This conclusion was based on the cited opinion of another division of the court below in adjudicating the companion claim of the stereotypers (*infra*, p. 17a). The other division, while reaching the same conclusion as the division which decided this case, nevertheless observed that "it may reasonably be said that the phrase ['permanent suspension of publication'] is fairly susceptible to different constructions . . ." *Infra*, p. 29a; *Allen* v. *Globe-Democrat Publishing Co.*, 368 S.W. 2d 460, 463. It noted that, "in at least three court cases it has been stated that by reason of the particular attending circumstances 'publish' and 'print' may be construed to mean the same." *Infra*, p. 34a; *id.* at 466. Thus, Webster's Third New International Dictionary (1960), in defining "publish," notes that "print" is a specific usage of the word "publish." Similarly, Webster's New International Dictionary, 2d ed. (1959), in defining "publish,"

states: "PRINT, PUBLISH are often confused." There is thus nothing in the word "publication" which inexorably precludes reading it to mean "printing." Whether "suspension of *publication*" means "suspension of *printing*" is therefore a question of what interpretation is appropriate in the context in which the words were used. And that question virtually answers itself. For the work of the printer in the composing room is printing. He loses his job when printing is suspended. That the newspaper can be issued without use of his services as a printer is totally irrelevant to his situation and to the reason that the contract has made provision for severance pay on his behalf. Accordingly, given the framework within which the words are to operate, "suspension of publication" is easily read as "suspension of printing."

(d) These considerations illustrate but do not exhaust the reasonable basis in the evidence for the jury's verdict. The principle of the inviolability of a jury verdict supported with reason by evidence, applicable to vindicate other federal rights and which should also be applied to vindicate LMRA § 301 contract rights, requires in this case that jury's verdict stand because justified by the proofs with reason.

II

Apart from the jury's verdict, considered as a matter for independent judicial determination, what we have already stated shows that the agreement is correctly interpreted to require the payment of severance pay for loss of employment resulting from the arrangement between Globe-Democrat and Pulitzer. The explication of this conclusion would present the Court with

an exceptionally suitable vehicle for demonstrating how a collective bargaining agreement should be interpreted. Except for probing the no-strike and arbitration commitments, this Court has had little occasion to explore the content of the collective bargaining agreement. This case presents in clear and telling fashion the interplay of purpose, practical construction, and literalism. In the discharge of the Court's responsibility to fashion a body of federal substantive law for the interpretation and enforcement of collective bargaining agreements, this Court's unfolding of the ramifications of this agreement would provide meaningful guidance in the interpretation of the generality of collective bargaining agreements. Furthermore, since the particular provision whose interpretation is at issue in this case is typical in the newspaper industry throughout the United States (*supra*, p. 13, *infra*, pp. 46a-57a), definitive determination of its legal status is important on its own account.

III

The questions presented by this petition—the province of the jury in the interpretation of the agreement and the correct formulation and application of the principles pertinent to the interpretation of the agreement independently of the jury—were put in issue in the trial court by motions for directed verdict, requested instructions, and the charge to the jury (*supra*, pp. 10-11). On appeal, petitioners argued with particularity that the judgment should be affirmed either on the premise that the verdict reached by the jury was within its province as the trier (R. 631-632, 633-644) or on the premise that the judgment rested on a correct interpretation of the agreement considered as

a matter for independent judicial determination (R. 608-631). Accordingly, pretermitting for the moment the failure to denominate the questions as federal in nature until the motion for rehearing, there is no doubt that the questions which are presented by this petition were raised and preserved below at the trial and appellate levels.

It is true, however, that not until the motion for rehearing or to transfer the cause to the court below *en banc* was there specific advertence to section 301 (a) of the Labor Management Relations Act, 1947, and the effect exerted by that section in creating federal law controlling the interpretation and enforcement of the agreement (R. 691-695, 699, 701-715, 727-728). While the federal orientation of the questions which had been timely raised was thus not specifically urged until the motion for rehearing, the short answer to a contention that this was too late is that the court below nonetheless entertained and decided the merits of the federal claim in denying the motion. Thus, in its opinion denying the motion, the court below stated that "*We will consider the matter . . .*" (*infra*, p. 21a, emphasis supplied), and concluded on such consideration that the decision it had reached did not conflict with federal law (*infra*, pp. 21a-22a). Similarly, in contemporaneous opinions issued the same day denying companion motions filed by the sterotypers and paper handlers, another division of the same court stated that "we shall examine the contention, presented now for the first time, that we erred in not ruling the case pursuant to 'federal substantive law'" (*infra*, pp. 37a, 41a), and concluded upon such examination that "plaintiffs certainly have not demonstrated that we

reached an incorrect result."[10] *Infra*, pp. 37a-39a, 41a-43a; *Irwin* v. *Globe-Democrat Publishing Co.*, 368 S.W. 2d 452, 458-459; *Allen* v. *Globe-Democrat Publishing Co.*, 368 S.W. 2d 460, 468-469.

Thus, there was actual entertainment and decision of the federal claim by the court below, and this action forecloses any contention that the federal question may not be urged before this Court. "A federal question advanced for the first time in a petition for rehearing filed in the highest state court in which decision could have been had is deemed to have been properly and timely raised if that court entertains the petition and affirmatively decides the federal question." Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, § 84 (Wolf and K[illegible] ed. 1951); and

[10] The same division of the court below (Division One) that decided this case also decided *Monterosso*, the mailers' action, and in *Monterosso* the opinion on rehearing cited Division One's contemporaneous rehearing opinion in this case, *Ackerman*, as well as the contemporaneous rehearing opinion of the *other* division (Division Two) in *Irwin* (*infra*, p. 45a). By invoking the rehearing opinion of Division Two, Division One plainly adopted Division Two's statement that "We may, in our discretion, consider plain error affecting substantial rights, . . . and on that discretionary basis *we shall examine the contention* . . ." (*infra*, pp. 37a, 41a, emphasis supplied). There is thus no question that the division in this case did decide the federal question on rehearing.

The rehearing opinion below, in discussing the merits of the federal question, concluded with the statement that its decision was consitent with federal law "*Assuming* that we are obliged to follow and apply federal substantive labor law and policy . . ." (*infra*, p. 22a, emphasis supplied). Any other assumption would have squarely collided "with applicable decisions of this court." Rule 19(1)(a), Supreme Court Rules; *supra*, pp. 14-15. But that the obligation to follow federal law is still grudgingly entertained as an assumption only indicates that the decision on the merits of the federal question by the court below is inconsonant with federal precepts of labor law.

see, *Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120, 138. "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it." *Raley* v. *Ohio*, 360 U.S. 423, 436; and see, Robertson & Kirkham, *supra*, § 83.[11]

Furthermore, apart from the conclusive effect of the actual consideration and decision of the federal questions by the court below, the failure to specify their

---

[11] The denial by the court below of the motion to transfer the cause to it *en banc* of course does not mean that the court below did not decide the federal questions on the alternative motion for rehearing. While the Constitution of the State of Missouri confers the right to an *en banc* rehearing in any case originally decided by a division of the court "when a federal question is involved" (*Gorman* v. *Washington University*, 316 U.S. 98; *cf.*, *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 98-101), the view of the Missouri Supreme Court as to the constituents of a federal question for the purpose of an *en banc* transfer is much narrower than the constituents of a federal question for the purpose of this Court's jurisdiction. Thus, the Missouri Supreme Court holds that interpretation or application of a federal statute or regulation does not involve a federal question for the purpose of *en banc* transfer (*McAllister* v. *St. Louis Merchants' Bridge Terminal Ry. Co.*, 324 Mo. 1005, 25 S.W. 2d 791, 792-793; *Huckleberry* v. *Missouri Pac. R. Co.*, Mo. Sup., 26 S.W. 2d 980, 987-988; *Pashea* v. *Terminal R.R. Assn. of St. Louis*, 350 Mo. 132, 165 S.W. 2d 691, 696), although such an issue presents a classic federal question for the purpose of this Court's jurisdiction, and is precisely the kind of federal question presented in this case. Recognizing that denial of a motion for *en banc* transfer does not mean that a federal question for federal jurisdictional purposes has not been decided, this Court has reviewed on the merits judgments of the court below rendered by a division after denial of *en banc* transfer by the division. *Moore* v. *Terminal R.R. Assn.*, 358 U.S. 31, reversing, 312 S.W. 2d 769; *Rogers* v. *Missouri Pac. R.R. Co.*, 352 U.S. 500, reversing, 284 S.W. 2d 467. Where an *en banc* transfer is denied the judgment of the division is of course that of the highest court of the state in which a decision could be had. 28 U.S.C. § 1257. Accordingly, in this case, no implication adverse to jurisdiction in this Court can be drawn from denial of *en banc* transfer.

federal character earlier than rehearing was in any event justifiable in the circumstances of this case. This action was instituted at a time when *Association of Westinghouse Salaried Employees* v. *Westinghouse Corp.*, 348 U.S. 437, was the ruling decision. Under the teaching of *Westinghouse*, section 301 did not cover an action to enforce rights conferred by a collective bargaining agreement which were individual and personal to the employee. A suit to recover severance pay due an employee would be such an action. Thus, in this case, so long as *Westinghouse* prevailed, it would have been purposeless to advance a federal claim in terms. Not until *Smith* v. *Evening News Association*, 371 U.S. 195, decided December 10, 1962, was it finally determined that the *Westinghouse* "holding is no longer authoritative as a precedent." *Id.* at 199. Meanwhile, the instant action had been brought, tried, and appealed, the appeal having been taken by respondent (appellant below) on January 11, 1962 about eleven months before *Smith* v. *Evening News Association* was decided (R. 516), with briefs filed by respondent on November 24, 1962 (R. 522), and by petitioners on January 12, 1963 (R. 561). While it is arguable that, *Smith* v. *Evening News Association* having been decided one month before petitioners' brief was filed in the court below, the federal question should have been articulated in that brief,[12] diligence did not require specification at that time in view of the recency of this Court's decision, the possibility of a rehearing in it, and the advanced stage of the state appeal. Rather, the doctrinal shift worked by *Smith* v. *Evening News*

[12] But compare Stern and Gressman, Supreme Court Practice, 100 (3d ed. 1962): "Briefs and oral arguments before state courts are not ordinarily part of the record filed with the Supreme Court and cannot be used to establish that a federal question was raised."

Association made the petition for rehearing the first fully appropriate occasion to focus the federal questions. Thus, while not precisely encompassed by it, this case is fairly within the "surprise" principle that a federal claim asserted for the first time upon a petition for rehearing is timely if tender at that stage was caused by an unexpected ruling bringing the federal claim to the fore and making rehearing the first adequate opportunity to present it.[13]

Finally, the absence of earlier designation of the claims as federal is in this case altogether formal. By reason of section 301 a federal question is inherent in the interpretation and enforcement of a collective bargaining agreement in an industry affecting interstate commerce. Decision of a disputed issue of interpretation or enforcement of necessity involves a controlling federal question because the relevant law is exclusively federal. In this case the specific reasons in support of petitioners' claim—the province of the jury and the correct formulation and application of the standards of contract interpretation independently of the jury—were advanced with particularity from the outset of the litigation. All that lacked until rehearing was their formal designation as federal. This omission makes no difference because, despite the absence of formal federal denomination, the bundle of considerations relevant to decision of the claim was in fact presented, considered and determined. The claim being in fact federal, and the specific considerations

---

[13] *E. g., Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U.S. 313, 320; *Brinkerhoff-Faris Trust Co.* v. *Hill*, 281 U.S. 673, 677-678; Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, §§ 76, 78 (Wolf. & Kur. ed. 1951); Stern & Gressman, Supreme Court Practice, 99 (3d ed. 1962).

relevant to the claim having been in fact presented and decided, no more is required.

CONCLUSION

For the reasons stated this petition for a writ of certiorari should be granted.

Respectfully submitted,

MALCOLM L. BARTLEY
DONALD S. SIEGEL
705 Olive Street
St. Louis 1, Missouri

BERNARD DUNAU
912 Dupont Circle Building
Washington, D. C. 20036

Attorneys for Petitioners.

October, 1963.